Case No.: ZON2008-10 (Deferred from April 10, 2008 MAPC Hearing) - David Lowry (owner), Christian Ablah (applicant), Poe & Associates, Attn: Tim Austin (agent) Request City zone change from "B" Multi family and "MF 29" Multi family to "LC" Limited commercial on property described as:

Lot 1 & N 33.51 feet of Lot 3, Block 2, East Boulevard Addition, Sedgwick County, Kansas.

AND

The South 16.49 feet of Lot 3 and all of Lot 5 & N 8.51 feet of Lot 7, Block 2, East Boulevard Addition, Sedgwick County, Kansas. Generally located 454 North Bleckley and 446 North Bleckley.

BACKGROUND: The applicant is requesting a zone change from B Multi-family Residential ("B") (Lots 1, 3 and the north 40.51 feet of Lot 5) and MF-29 Multi-family Residential ("MF-29") (the south 9.49 feet of Lot 5 and the north 8.51 feet of Lot 7) to the LC Limited Commercial ("LC") district. The application area contains approximately 0.4-acres with 128 feet of frontage located along Central Avenue, one block east of Oliver. These lots are developed with two four-plexus, one on each lot, built in the early 1940’s, with what appears to be less than five off-street parking spaces serving eight dwelling units. The applicant proposes the rezoning to allow for the highest and best use to allow commercial development.

The majority of residential development in this area is located between Bleckley Drive (west) and Pinecrest Avenue (east), along the south side of Central Avenue. This development consists of four-plexes, duplexes and single-family residences zoned B or MF-29. Most of these multi-family structures appear to have been built in the early 1940’s.

Property south of the subject site is zoned MF-29, and is developed with a four-plex, also built in the early 1940s. Property east of the site is zoned B and developed with single-family residences. Property north of the subject site, across Central Avenue, is zoned LC, and is developed with a fast food restaurant. West of the subject site, across Bleckley Drive, the property is zoned LC, and is developed with a retail strip center.

The subject site is located in flood zone AE. The AE flood zone is a flood insurance rate zone that corresponds to the 100-year floodplain that is determined in the Flood Insurance Study by detailed methods. Mandatory flood insurance purchase requirements apply. The waterway that flows through this area, the West Branch Dry Creek of Gypsum Creek, begins just north of Claude Lambe Park and travels south through the LW Clapp Golf Course before joining Gypsum Creek southeast of Hillside and Pawnee.

CASE HISTORY: This site is platted as the East Boulevard Addition, approved in 1930. There was an attempt to rezone this property in 1990-91 (Z-3010) to LC but the City Council denied that request and forwarded the request back to the Metropolitan Area Planning Commission (MAPC) for consideration of OC Office Commercial ("OC") zoning (converted in 1996 to the NR Neighborhood Retail ("NR") district). Office Commercial zoning was approved by the MAPC, and returned to the City Council which approved the OC zoning subject to replatting within one year. The property was never replatted during the one year time span, and was allowed to lapse by the applicant. The rezone never took effect due to the property not being replatted.

ADJACENT ZONING AND LAND USE:

| NORTH: | LC Limited Commercial | Fast Food Restaurant |
| SOUTH: | MF-29 Multi-family Residential | Four-plex |
| EAST:  | B Multi-family Residential | Single-family Residential |
|       | TF-3 Two-family Residential | Duplex |
| WEST:  | LC Limited Commercial | Retail Strip Store |

PUBLIC SERVICES: All public services are available at the subject site. Central Avenue is a four-lane principal arterial with 40,801 Average Daily Traffic (ADTs). Nearby, Oliver Avenue is a four-lane minor arterial with 31,853 ADTs. Bleckley Drive is a local residential street, but is not classified on the Federal Roadway Functional Roadway
Map. The intersection of Central and Bleckley is not signalized. The subject site currently has access drives on to both Central and Bleckley.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” depicts this site as “Urban Residential.” This category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The Functional Land Use Guide shows the south side of Central, from Bleckley to Pinecrest, to retain the existing residential zoning classification. From Pinecrest to Edgemoor, the guide favors LC zoning or rezoning requests. Zoning and rezoning requests for LC or GO General Office (“GO”) are favored on the north side of Central from Oliver to Edgemoor. The commercial location guidelines indicate the stripping out of commercial zoning along arterial streets is undesirable. Also the location guidelines state that commercial uses should locate in compact clusters or nodes versus extended strip developments, commercially-generated traffic should not feed directly onto local residential streets and commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas such as: the CBD fringe; segments of Kellogg; established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development.

**RECOMMENDATION:** The application area is small for most modern LC uses. To encourage the redevelopment of this site with land uses which will maintain a degree of compatibility with the residential land uses to the south and east, and to establish a new zoning classification on the property that is more in line with the commercial and office land uses to the west and north, and which recognizes the fact that this site fronts onto a arterial street, staff recommends that the request for LC not be approved, but instead staff recommends that the property be zoned NR. Neighborhood Retail zoning would establish a transition area between the existing non-residential uses in the area and the neighborhood to the south and east because the NR districts limits individual retail uses to a maximum size of 8,000 square feet; restaurants are limited to a maximum size of 2,000 square feet and drive-through service is prohibited. Other development standards also apply to the NR district, but the NR district would provide for land uses which typically produce fewer vehicular trips than would be generated by LC land uses. Based upon information available prior to the public hearings, planning staff recommends that the request for LC Limited Commercial zoning be DENIED, however, if the Planning Commission feels the request is appropriate, staff would recommend APPROVAL of NR Neighborhood Retail zoning, subject to replatting within one year, and dedication of complete access control along Bleckley Drive, and dedication of access control except for one opening along Central Avenue.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property south of the site is zoned MF-29. The MF-29 property is developed with a four-plex, built in the early 1940s. Property west of the site is zoned B, and developed with single-family residences. Property north of the subject site, across Central Avenue, is zoned LC, and is developed with a fast food restaurant. East of the subject site, across Bleckley Drive, the property is zoned LC, and is developed retail strip store.

2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned B and MF-29. The B district permits a reasonably lengthy list of permitted uses including a variety residential uses and medical services. The site could probably be adapted to uses currently allowed. The site contains .4 acre, which is a small area for most current day retail uses.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of LC zoning would introduce some uses not in character with adjacent existing residential uses. Commercial uses generate more average daily traffic; introduce larger signage and more lighting than is found in typical residential areas. Approval could encourage other property owners seek similar zoning up and down Central Avenue that could impact Central Avenue’s ability to carry the traffic it was designed to carry.

4. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** If approved, presumably this request would generate more economic return for the applicants than leaving the site as currently zoned. From the public’s standpoint, approval of this request would be a case of encroachment of commercial zoning into an established neighborhood and would not be consistent
with the community’s adopted plan that encourages the use of zoning as one of the tools to promote and enhance neighborhood stability and investment.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” depicts this site as “Urban Residential.” This category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The Functional Land Use Guide shows the south side of Central, from Bleckley to Pinecrest, to retain the existing residential zoning classification. From Pinecrest to Edgemoor, the guide favors LC zoning or rezoning requests. Zoning and rezoning requests for LC or GO General Office are favored on the north side of Central from Oliver to Edgemoor. The commercial location guidelines indicate the stripping out of commercial zoning along arterial streets is undesirable. Also the location guidelines state that commercial uses should locate in compact clusters or nodes versus extended strip developments, commercially-generated traffic should not feed directly onto local residential streets and commercial uses that are not located in planned centers or nodes (including large free-standing buildings, auto-related and non-retail uses) should be guided to other appropriate areas such as: the CBD fringe; segments of Kellogg; established areas of similar development; and, areas where traffic patterns, surrounding land uses and utilities can support such development. The Wichita City Council found that OC zoning or its current equivalent of NR zoning was appropriate in 1990.

6. Impact of the proposed development on community facilities: All services are in place, and any increased demand on community facilities can be handled by current infrastructure.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MILLER explained that staff received a call from the developer CHRISTIAN ABLAH late yesterday afternoon wherein he provided additional information relative to the application that staff did not have until that time. He said ABLAH mentioned requesting a deferral; however, staff pointed out that the item had already been deferred once and suggested that the applicant go ahead and make a case for their request with the understanding that staff would do whatever “tweaking” of the recommendation was necessary during the meeting. He said essentially what staff has tried to do is make a recommendation that is similar to recommendations on other properties in this same situation. He said staff has removed the supplemental use requirements limiting the property to 2,000 square feet; however, it was too late to change the Staff Report.

FOSTER asked about the issue of the drainage canal on the east side of the property and asked if there was any new information related to that?

SLOCUM replied that the applicant would be able to answer that.

TIM AUSTIN, POE & ASSOCIATES, AGENT FOR THE APPLICANT, said the nature of the phone call to Planning staff was to re-emphasis the plan of assembling properties and redeveloping the east side of Kellogg and Oliver. He showed photographs of the remodeled Oliver Square including Papa John’s and Sugar Sisters. He said the applicant is interested in doing a larger development in the area and that fits in with LC zoning on both the northeast and southeast corners. He said the flood study was currently in progress, but it is not completed. He said he surveyed the finished floors on the existing building to see how they related to the published FEMA Flood Map and that it was 1363.72 as compared to the 1363 base flood elevation. He said because of the complicated nature of the drainage, the flood study has not been completed yet. He said there is a tremendous amount of LC zoning from Oliver to Edgemoor on both sides of the street with a mixture of multi-family and NR, and they feel this request is consistent with past policies. He said the drainage canal to the east is 40-foot wide. He said the applicant is not interested in deferring the application. He concluded by stating that the property owner was present to support the application.

MITCHELL clarified that floor elevation was above the base flood elevation, even though the property is partly mapped in the flood plain. He also clarified that the flood study was currently under way.

AUSTIN said that was correct.
MITCHELL asked about the City’s Capital Improvement Program (CIP) to make improvements in the area?

AUSTIN said the City does have an item, he believes in the 2015 CIP Budget, but he thinks it is inadequately funded. He said Engineering staff has indicated they would like a further study with an aerial flight and ultimately extend the box from Kellogg north.

MITCHELL asked if the applicant was agreeable to the requirement of platting within one year.

AUSTIN said they didn’t feel like platting was necessary since the lots are already platted and he recalled from the last discussion on this item that requirement would be waived. He added that they are agreeable to the access limitations.

MITCHELL said that leaves open the question of whether there is enough space and elevation available for the City’s proposed CIP to go between these two properties and no way to make sure that is accomplished through platting.

AUSTIN said until a program is identified and designed, they feel it is inappropriate to impede an owner who has a property that can be developed.

MITCHELL said he thought that was one of the items AUSTIN agreed to try to resolve before the case was rescheduled.

AUSTIN said he believed the issue was the flood study because the flood way for the FEMA map stops at 1st Street and picks ups further north at Murdock or 9th Street. He said the applicant has been talking with the City about a redevelopment district and the flood study will help the applicant finalize what land is actually buildable, footprints of buildings, and what land would be flood plain and flood way.

MCKAY asked why the applicant did not want to replat.

AUSTIN responded that the area was already platted. He said generally the purpose of replatting is to bring property into compliance with subdivision regulation or City’s needs. He said they don’t see any needs that have been defined.

MCKAY commented that he did not think the restrictions on B Multi-family and LC Limited Commercial are the same.

HENTZEN asked staff why they were asking for a replat.

MILLER said staff felt that was the easiest was to address drainage issues and access controls. He said residential zoning doesn’t typically have access controls. He said if the Commission feels it is more appropriate, an alternative would be that no building permits be issued until a full drainage study has been reviewed and approved and access controls approved by the City Traffic Engineer, in lieu of platting.

FOSTER said he feels this project is important in terms of inner city revitalization and promoting inner city neighborhoods so he thinks the Commission needs to look at all means of making it happen. He asked if a Protective Overlay (PO) of the LC Limited Commercial zoning would be appropriate and what would staff like to see in the PO to make the project possible.

MILLER commented that the primary difference between LC and NR is that fewer uses are allowed in the NR but general retail is permitted. He said NR limits restaurants and building services and eliminates “drive through” services. In addition, he said buildings can’t be larger than 2,000 square feet and the other primary difference is no individual retail can exceed 8,000 square feet. He said the reason for recommending NR versus LC was to protect the residential character on the east and south of the property. He said it is hard to buffer LC on such a small site that close to residential uses. He commented that staff is also supportive of in-fill projects.
MARNELL commented that he didn’t recall seeing replatting coming through before as a recommendation and added that the Commissioner has changed a lot of zoning from one level to another.

MILLER reiterated what he had said earlier about dealing with the drainage issues and access control and said platting was one way to take care of those items. He said the Commission could require the applicant to submit a drainage plan and access control as separate instruments prior to the issuance of building permits.

MARNELL referred to the recommendation in the Staff Report stating that there already was complete access control along Bleckley and dedication of access control except one opening along Central. He asked if that was not part of the zone change.

MILLER said that language is inserted to warn the applicant that is what will be expected at platting so that will not be a surprise.

MARNELL asked if that could be done at these proceedings if the zone change was approved.

MILLER responded yes, that was the other way to take care of the issues.

HENTZEN asked the agent if the applicant would agree to the alternative approach recommended by staff.

AUSTIN said yes, and added that he believed staff withdrew the request for the replat requirement and they have previously agreed to dedication of the access controls.

JOHNSON inquired if anyone else wished to speak on this item.

MARNELL asked about the drainage study.

AUSTIN said the requirement that no building permits would be issued until the drainage study is completed and approved will become an issue when they pull the building permits. He said they can file a letter of map amendment and still obtain a building permit, so they do not want that to be a condition of the proposed zoning change. He said the only condition that is necessary is the dedication of access controls.

HILLMAN clarified then they are not planning on waiting until the flood control process is completed by the City before they develop the property?

AUSTIN said that process is at least ten years out, and not scheduled until 2015.

MITCHELL said the alternative to the City’s approval of a new flood study was a drainage plan approved by Storm Water Engineering prior to obtaining building permits.

AUSTIN responded yes.

KATHY ARRINGTON, PO BOX 471 N NEWTON, KS 67117, said she was the property owner’s (Ralph and Rosemary Lowry) daughter and said she was present to express that they are in favor of this rezoning request. She said her parents have had a contract pending since December, 2007 and that this delay has caused them financial distress. She said their issue was whether to fix the properties to rent, or wait to see what Mr. Ablah was able to do. She said they are in favor of the zoning, and quite frankly wanted to be rid of the properties. On behalf of her parents, she requested that the Commission approve the zoning.

STEPHANIE MAYES, 601 STONE CREEK DRIVE, NEWTON, KS 67114, said she was with Coldwell Bankers and that they have been marketing the property for close to a year. She said they have avoided selling to persons in the community renting other properties and commonly known as “slum lords”. She said Mr. Ablah’s proposal was a good opportunity for the community and this area. She concluded by saying that this is a forgotten area and that Mr. Ablah has already cleaned up the corners and was working on putting something together. She said they support the application.
MOTION: To approve for LC zoning subject to staff’s alternative recommendation which was to submit a drainage plan and dedication of access controls per the City Traffic Engineer prior to the issuance of any building permits.

HENTZEN moved, MCKAY seconded the motion, and it carried (9-1). MILLER STEVENS – No.

HENTZEN said he felt this was a reasonable request and that it appears the drainage issue has been agreed to by staff and the applicant. He added that he didn’t know what the applicant could do that would affect drainage in this area.

FOSTER said he would like restrictions on restaurants and industrial uses looked at as well and asked if a PO could be added to the case as part of the motion.

HENTZEN said no, he wasn’t willing to change his motion.

SUBSTITUTE MOTION: To approve for LC zoning subject to staff’s alternative recommendation which was to submit a drainage plan and dedication of access controls per the City Traffic Engineer prior to the issuance of any building permits, and that Staff would craft a PO of uses.

DIRECTOR SCHLEGEL asked FOSTER what use restrictions he was talking about so staff could have some guidelines.

FOSTER said size of spaces, drainage issues, and he would like to limit practicality of some uses.

The substitute motion died due to lack of a second.